



## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

[Docket ID COE-2023-0003]

ZRIN 0710-ZA18

#### Water Resources Development Act 2020, Section 165 Pilot Program for Continuing Authority Projects in Small or Disadvantaged Communities Draft Environmental Assessment, Notice of Availability for Comment

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability for public comment.

**SUMMARY:** The Department of the Army is publishing this notice to solicit comment on an environmental assessment of implementation of Section 165 of the Water Resources Development Act of 2020 which directs the Secretary of the Army to establish and implement a pilot program carrying out continuing authority projects in small or disadvantaged communities.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by docket number COE-2023-0003, using any of these methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
2. E-mail: [usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil](mailto:usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil) and include the docket number, COE-2023-0003, in the subject line of the message.
3. Mail: HQ, U.S. Army Office of the Assistant secretary of the Army, ATTN: Mr. Gib Owen, at U.S. Army, 108 Army Pentagon, Washington, DC 20310-0108.

4. Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2023-0003. The public docket will include all comments exactly as submitted and without change and may be made available on-line at <http://www.regulations.gov>. This will include any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information where disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the U.S. Army without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment. No alternative media thumb drive or CD-ROM can be submitted. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gib Owen at [usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil](mailto:usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil) or 571-274-1929.

**SUPPLEMENTARY INFORMATION:** The Department of the Army is publishing this notice to solicit comment on an environmental assessment prepared to support the implementation of Section 165 of the Water Resources Development Act (WRDA) of 2020 (PL 116-260). Section 165(a) of the WRDA of 2020, as amended, directs the Secretary to implement a pilot program for carrying out continuing authority projects in small or disadvantaged communities at 100% Federal costs. It requires the Secretary to issue a Federal Register notice to solicit proposals from non-federal interests for a project under a continuing authority program (CAP) for an economically disadvantaged community. A description of each CAP is provided in Engineer Pamphlet (EP) 1105-2-58, Continuing Authorities Program. A separate Federal Register notice soliciting qualified non-Federal interests to submit project proposals will be published at a later date. The notice would be published upon implementation of the Section 165 Pilot Program. A copy of the draft environmental assessment can be found at:

<https://www.usace.army.mil/Missions/Civil-Works/Water-Resources-Development-Act/>

The contents of the documents do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or departmental policies.

### **Procedural Requirements**

a. *Review under the National Environmental Policy Act.* As required by the National Environmental Policy Act (NEPA), the Department of Army prepares appropriate environmental analysis for its activities affecting the quality of the human environment. We have preliminarily determined that this proposed Section 165 Pilot Program if finalized, would not constitute a major Federal Action significantly affecting

the quality of the human environment because actions will be taken, during the planning to avoid, minimize, or compensatory mitigate for any adverse impacts that could occur as a result of the implementation of the recommended plan. The preliminary determination that an Environmental Impact Statement (EIS) will not be required for the issuance of this significant guidance will be reviewed in consideration of the comments received.

b. *Unfunded Mandates Reform Act*. The Unfunded Mandates Reform Act does not apply to the Section 165 Pilot Program because the guidance associated with this action provides policy for the Commanding General of the U.S. Army Corps of Engineers to conduct Continuing Authority Program projects at 100% Federal expense. The Assistant Secretary of the Army for Civil Works has found that small governments will not be significantly and uniquely affected by this guidance.

c. *National Technology Transfer and Advancement Act*. This Section 165 Pilot Program does not involve technical standards and as such there are no anticipated requirements under this Act.

d. *Executive Order 12866*. Executive Order 12866 (58 FR 51735, October 4, 1993), defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In addition, per 32 CFR 339.7 (85 FR 32299), the same tests for significance also apply to guidance documents. This proposed Section 165 Pilot program has been found not to be a significant guidance action.

e. *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*. The proposed Section 165 Pilot Program does not impose any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required.

f. *Executive Order 13132: Federalism*. This proposed Section 165 Pilot Program will not have substantial direct effects on the states, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

g. *Regulatory Flexibility Act*. The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the proposed rule on small entities, a small entity is defined as: (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Although this is not a rulemaking action, the Assistant Secretary of the Army for Civil Works nonetheless certifies that this proposed

Section 165 Pilot Program does not have a significant economic impact on a substantial number of small entities. The proposed Section 165 Pilot Program does not place any regulatory burdens on small entities or have a significant economic impact on such entities.

*h. Congressional Review Act (5 U.S.C. 801 et seq.).* Pursuant to the Congressional Review Act, this proposed Section 165 Pilot Program has not been designated a major rule, as defined by 5 U.S.C. 804(2), as it is not a rulemaking action. However, analyzing the same parameters for this proposed significant guidance, the Assistant Secretary of the Army for Civil Works has determined that this proposed Section 165 Pilot Program is not considered “major” as defined by 5 U.S.C. 804(2), because it is not likely to result in: (1) An annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

*i. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.* Under Executive Order 13175, the Federal government may not issue a regulation that has substantial, direct effects on one or more Tribal Nation, on the relationship between the Federal government and Tribal Nation, or on the distribution of powers and responsibilities between the Federal government and Tribal Nations, and imposes substantial direct compliance costs on those communities, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal Nation governments, or we consult with those governments. If complying by consulting, Executive Order 13175 requires us to provide the Office of Management and Budget, in a separately identified section of the

preamble to the rule, a description of the extent of prior consultation with representatives of affected Tribal Nation governments, a summary of the nature of Tribal Nation concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires that agencies develop an effective process permitting elected officials and other representatives of Tribal Nation governments an opportunity to provide timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. This proposed Section 165 Pilot Program does not impose significant compliance costs on any Tribal Nation or otherwise have substantial direct effects on the same. The proposed Section 165 Pilot Program would not have any adverse physical impacts to human environment as the expected result of the Assistant Secretary of the Army for Civil Works actions will be the development and construction of CAP projects. In the event that any Tribal Nations may have concerns with the proposed Section 165 Pilot Program, the Assistant Secretary of the Army for Civil Works encourages them to submit comments through the public comment process and/or to request government-to-government consultation.

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

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